

July 3, 2007

Serial Letter: KFM-LET-000289

California Department of Transportation
SFOBB – E2T1 Project
333 Burma Road
Oakland, CA 94607

Attention: Pedro Sanchez

Reference: SAS E2/T1 Foundation Project
Caltrans Contract No 04-0120E4
KFM Job No. 364/4347

Subject: NOPC #06-062007 -- Objection to Engineer's Response in SL-3235

Dear Pedro:

Kiewit/FCI/Manson, AJV (KFM) and its supplier Trans Bay Steel (TBS) have received and reviewed the Department's letter SL-3235 regarding Initial Notice of Potential Claim (NOPC) #06-062007. Please review TBS's response in the attached letter dated July 3, 2007. As a result of our review, KFM and TBS hereby object to the Engineer's response with respect to TBS's request for recognition of a contract change to comply with the Department's interpretations regarding TBS's welding operator training program and NOPC #06-062007.

KFM and TBS have fully complied with the contract in their attempts to negotiate a settlement with respect to the welder trainee issue. Furthermore, the Department was actively involved in this issue from the outset and has not been prejudiced by the timing of the NOPC. Therefore, KFM and TBS object to the Engineer's incorrect decision that the Contractor has failed to "conform to specified dispute procedures", failed "to pursue diligently and exhaust the administrative procedures in the contract", and is deemed to have waived the right to pursue claims related to this issue under the terms of the contract, up to and including arbitration.

KFM and TBS have complied with contract requirements and the Department's requests with respect to negotiation of Contract Change Order (CCO) – 039 as follows:

- In accordance with the Department's request in SL-2147, KFM LET-214 dated November 1, 2006 replied with an explanation of why proposed CCO-039 was not acceptable and was being returned un-signed. The Department's letter SL-2147 did not describe the proposed CCO-039 as a "final offer." KFM did not receive a written reply to this letter until receiving SL-2955, dated March 12, 2007.

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- The Department's letter SL-2955 confirms statements made at weekly coordination meetings that CCO-039 will not be issued and no further discussion with respect to work performed at TBS is warranted. In response, KFM and TBS explained in KFM LET-258 that issues raised in negotiations leading up to CCO-039 and in KFM LET-214 had not been addressed by the Department and requested negotiations be continued.
- KFM and TBS filed NOPC #06-062007 on June 20, 2006, five days after meeting with the Department to review the status of welding operator trainee negotiations. KFM and TBS were informed at that meeting that the Department does not recognize any contract changes with respect to changes made by TBS to their training program in response to "Non-Conformance Reports" issued by the Department.

KFM, on TBS's behalf, requests the Department to acknowledge this objection and reconsider the Engineer's decision with respect to the history of negotiation of this issue and recognize the validity of TBS's Notice of Potential Claim. KFM and TBS would welcome continued negotiations towards settlement of this issue.

Sincerely,

KIEWIT/FCI/MANSON, a JV

<<< ORIGINAL SIGNED >>>

Lee Zink
Project Director

Attachment

cc: file